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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of January 15, 1970

Between

J. T. VALLEROY AND F. D. BRUMBAUGH

And

NORFOLK AND WESTERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1970

Between

J. T. VALLEROY AND F. D. BRUMBAUGH

And

THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY, as Agent

CONDITIONAL SALE AGREEMENT dated as of January 15, 1970, between the persons named in Item 1 of Schedule A hereto (hereinafter collectively called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and NORFOLK AND WESTERN RAILWAY COMPANY, a Virginia corporation (hereinafter called the Railroad).

WHEREAS, the Manufacturer has agreed to arrange to have constructed, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 hereof, respectively, called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Manufacturer will arrange to have the Equipment constructed at the plant set forth in Schedule B hereto and will sell and deliver the Equipment to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery of and

pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto with such modifications thereof as may have been agreed upon in writing by the Manufacturer and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission and Department of Transportation requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. Delivery. The Manufacturer will deliver the Equipment to the Railroad, f.o.b. the Railroad's tracks at the place or places and in accordance with the delivery schedule set forth in Schedule B hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, accidents due to natural causes, acts of the Railroad, acts of government (such as embargoes, priorities and allocations,

war or war conditions), riot or civil commotion, sabotage, strikes, differences with workmen, fire, flood, explosion, accidents or other events resulting in damage to plant, equipment or facilities and delays in receiving necessary materials.

The Railroad may (a) purchase hereunder from the Manufacturer, or arrange for the acquisition by the Vendor from a person or persons other than the Railroad of, other units of railroad equipment of similar character to the Equipment, first put into service no earlier than January 15, 1970 (hereinafter called Additional Equipment), which Additional Equipment may be acquired in lieu of or in addition to units of the Equipment, and (b) exclude from this Agreement any unit or units of the Equipment described in Schedule B hereto. In the case of either of (a) or (b) above, the Vendor and the Railroad shall execute an agreement amendatory hereof or supplemental hereto whereby this Agreement shall cover any Additional Equipment or provide for any such exclusion of any unit or units of the Equipment. If the Railroad should exclude any units of the Equipment from this Agreement for any reason other than the Manufacturer's failure to have such units constructed, and to sell and deliver the same in accordance with its obligations hereunder, the

Railroad shall nevertheless be obligated to accept such units and pay the full Purchase Price (as hereinafter defined) therefor if and when such units shall be completed and delivered to it by the Manufacturer, such payment to be made in cash by the Railroad or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine which will assure the Manufacturer of prompt payment in full for such units of the Equipment.

Upon the completion of construction of one or more units of the Equipment, such unit or units shall be presented to an authorized representative of the Railroad for inspection at the place designated in Schedule B hereto for delivery of such unit or units. Such authorized representative shall execute and deliver to the Manufacturer, in duplicate, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that the unit or units of the Equipment covered thereby have been inspected, have been found to conform to the Specifications, are marked in accordance with Article 6 hereof and are thereby accepted on behalf of the Railroad.

Upon delivery by the Manufacturer to the Railroad and acceptance by the Railroad of a unit of the Equipment hereunder, the Railroad shall assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. Purchase Price and Payment. The estimated unit price and the estimated total price of the Equipment are set forth in Schedule B hereto. Such estimated prices are subject to such increase or decrease as may be agreed to by the Manufacturer and the Railroad. The term "Purchase Price" as used herein shall mean the estimated prices as so increased or decreased.

Units of the Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (such units settled for on each Closing Date being hereinafter called a Group).

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment as stated in the invoice or invoices thereof (hereinafter called the Invoiced Price), as follows:

(a) on any Closing Date the amount, if any (hereinafter called the Adjustment Payment), by which

the Invoiced Price of all the units of the Equipment for which settlement has theretofore been and is then being made (hereinafter called the Aggregate Invoiced Price), exceeds the Deferred Purchase Price set forth in Item 3 of Schedule A hereto;

(b) if applicable, upon receipt of a final statement of the aggregate Purchase Price (hereinafter called the Final Statement) setting forth any revision of the Purchase Price of the Equipment (the Purchase Price as so revised being hereinafter called the Final Purchase Price), the amount, if any, by which the Final Purchase Price of all units of the Equipment, as stated in such Final Statement therefor, shall exceed the sum of the Deferred Purchase Price and the Adjustment Payment, if any; and

(c) in 10 consecutive annual instalments (as nearly equal as practicable) payable on January 15, 1971, and on each January 15 thereafter to and including January 15, 1980, an amount equal to the Aggregate Invoiced Price (or Final Purchase Price if an amount greater than the Aggregate Invoiced Price) of the Equipment less the amounts paid or payable with respect thereto pursuant to subparagraphs (a) and (b) of this paragraph.

If this Agreement is assigned by the Manufacturer, the obligations of the Railroad under subparagraphs (a) and (b) of this paragraph shall be unsecured obligations and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations, provided the assignee makes payment in accordance with the provisions of the instrument of assignment.

The portion of the Purchase Price payable under subparagraph (c) of the preceding paragraph of this Article 3 shall bear interest from the respective Closing Dates, regardless of any postponement thereof pursuant to the provisions of any assignment of this Agreement, at the rate of 9-3/4% per annum. Such interest shall be payable, to the extent accrued, on the fifteenth days of January and of July in each year, commencing on the January 15 or July 15 following the respective Closing Dates; provided, however, that in the event any instalments payable under said subparagraph (c) of the preceding paragraph of this Article 3 are prepaid pursuant to the fourth paragraph of Article 7 hereof, interest accrued on the amount prepaid shall be payable simultaneously with such prepayment.

The Final Statement, if any, shall be delivered by the Manufacturer to the Railroad as soon as practicable after the last Closing Date.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date not more than 10 business days following receipt by the Railroad from the Manufacturer of a bill of sale, invoice and Certificate or Certificates

of Acceptance with respect to such Group, as shall be fixed by the Railroad by notice telephoned, telegraphed or mailed to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Article 3 shall be made in Federal funds. The Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due, except as provided in Article 7 hereof.

ARTICLE 4. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal

taxes - other than income, gross receipts (except gross receipts taxes in the nature of sales taxes), excess profits and similar taxes - or licenses hereafter levied or imposed upon or measured by this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment, upon the use or operation thereof, upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or

rights of the Vendor hereunder. If any such taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto or the Railroad shall have approved the payment thereof.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements contained herein, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, and all of the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute a bill or bills of sale of the Equipment transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 22 hereof. The Vendor will thereupon execute in the same manner and deliver at the same place, for filing, recording or deposit in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as

therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or to file such certificate within a reasonable time after written demand of the Railroad.

ARTICLE 6. Marking of Equipment. The Railroad will cause each unit of the Equipment to be kept numbered on both sides thereof with an identifying number as set out in Schedule B hereto and will keep and maintain, or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked in stencil on both sides of such unit, in letters not less than one inch in height, a legend designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any such unit of the Equipment in operation or exercise any control or dominion over any

part thereof until such identifying number and legend shall have been so marked on both sides thereof and will replace or cause to be replaced promptly such identifying number and all or any part of such legend that may be removed, defaced or destroyed. The Railroad will not change or permit the change of the numbers of any such units unless it notifies the Vendor and furnishes the Vendor with evidence that the Railroad has filed, recorded and deposited in all public offices where this Agreement shall have been filed, recorded and deposited a statement of new numbers to be substituted for the old numbers. In the event that any unit or units of replacement equipment acquired in accordance with Article 7 hereof shall have a different number from that of the unit or units replaced, the document or documents to be filed, recorded and deposited pursuant to said Article 7 shall show such new numbers.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered "Norfolk and Western," "N&W," or in some other appropriate manner for convenience of

identification of the interests of the Railroad therein or of identification of the interests therein of a subsidiary or affiliated railroad company controlled by the Railroad (hereinafter called an Affiliate) to which the Railroad shall grant the right to possession and use of the Equipment pursuant to the provisions of Article 11 hereof.

ARTICLE 7. Replacement of Equipment. In the event that any unit of the Equipment shall be or become worn out, lost, destroyed, irreparably damaged, condemned, seized by a government or otherwise rendered permanently unfit or unavailable for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as hereinafter defined) of units having suffered a Casualty Occurrence under this Agreement (exclusive of units having suffered a Casualty Occurrence with respect to which payment shall have been made to the Vendor pursuant to this Article 7) shall exceed \$100,000, the Railroad, within 30 days of such

event, shall promptly pay to the Vendor an amount equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of any Vice President, the Assistant Vice President - Finance or the Treasurer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence.

In the event that, in the judgment of the Railroad, any unit or units of the Equipment shall become obsolete or shall require substantial additions or improvements thereto or the rebuilding thereof in order to be operated efficiently and economically, the Railroad shall so certify to the Vendor in a certificate of any Vice President, the Assistant Vice President - Finance or the Treasurer of the Railroad and shall pay to the Vendor an amount equal to the Casualty Value of such unit or units as set forth in such certificate. Such unit or units shall be deemed to have suffered a Casualty Occurrence on the date of such payment.

Upon the written request of the Railroad, following payment to the Vendor of a sum equal to the Casualty Value of a unit or units of the Equipment having suffered or having been deemed to have suffered a Casualty Occurrence, the Vendor shall

deliver a bill or bills of sale of such unit or units transferring the Vendor's title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby.

Any money paid to the Vendor pursuant to the first and second paragraphs of this Article 7 shall, as the Railroad may direct in a written statement filed with the Vendor, be applied, in whole or in part, (a) to prepay, pro rata, on the interest payment date next following receipt by the Vendor of such written direction, a portion of each instalment of unpaid indebtedness payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof or (b) toward the cost of acquisition by the Vendor from a person or persons other than the Railroad of a unit or units of railroad equipment of similar character to the Equipment, first put into service no earlier than January 15, 1970, to replace such unit having suffered a Casualty Occurrence. The Railroad shall deliver to the Vendor a certificate of any Vice President, the Assistant Vice President - Finance or the Treasurer of the Railroad that the cost of such replacement equipment does not exceed the fair value thereof.

If the cost of any replacement equipment shall exceed the amount to be paid therefor by the Vendor from money paid to it pursuant to the first and second paragraphs of this Article 7, the Railroad shall provide the funds for the remainder of such cost and shall be entitled to a credit against any sum or sums thereafter payable to the Vendor pursuant to the first or second paragraph of this Article 7 to the extent that the Casualty Value which such replacement equipment would have if it suffered a Casualty Occurrence on the date such sum or sums are payable exceeds the amount so paid therefor by the Vendor.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be that amount which bears the same relationship to the Purchase Price thereof as the number of instalment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including January 15, 1980, bears to 10. The Casualty Value of each replacement unit having suffered a Casualty Occurrence shall be that amount which bears the same relationship to the cost thereof (provided for by the application of money paid to the Vendor pursuant to the first or second paragraph of this Article 7 as well as such

funds, if any, provided by the Railroad for the remainder of such cost) as the number of instalment payment dates remaining as of the date payment is made with respect to such Casualty Occurrence to and including January 15, 1980, bears to the number of such instalment payment dates remaining as of the date of the acquisition of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 6 hereof. Any and all such replacement units shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all prior liens and encumbrances except permitted liens as defined in Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the Vendor's title and its rights

under this Agreement with respect thereto. All such replacement units shall be warranted as being free from defects in materials, workmanship or design under normal use and service; provided, however, that such warranty may be limited to making good at the plant of the manufacturer of such units any part or parts of such units which shall, within one year after delivery thereof to the Railroad, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective. Whenever the Railroad shall file with the Vendor a written direction to apply amounts to or toward the cost of any replacement unit or units and a certificate of any Vice President, the Assistant Vice President - Finance or the Treasurer of the Railroad that the cost of such replacement unit or units does not exceed the fair value thereof, the Railroad shall file with the Vendor such number of executed counterparts, as may reasonably be requested, of an opinion of counsel for the Railroad covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 16 hereof shall have happened and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if

the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated prime by a national credit agency or (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Railroad. If

such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any of the events of default specified in Article 16 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 7 shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In the event that any unit of the Equipment shall to the knowledge of the Railroad be rendered permanently unfit for use due to a Casualty Occurrence after delivery by the Manufacturer of such unit to the Railroad and acceptance thereof on behalf of the Railroad but prior to the time that the Manufacturer shall have received the Invoiced Price for such unit either from the Railroad or any assignee of this Agreement, then the Railroad shall be obligated to pay the Purchase Price in full to the Manufacturer within 30 days of such Casualty Occurrence and such unit shall be excluded from this Agreement

and not included in the term "Equipment" as used in this Agreement.

ARTICLE 8. Maintenance and Repair. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

ARTICLE 9. Compliance with Laws and Rules. During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment to the extent that such laws and rules affect the operation or use of the Equipment. In the event that such laws or rules require the alteration of the Equipment, the Railroad will comply therewith, at its expense, and will maintain the Equipment in proper condition for operation under such laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not,

in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. Reports and Inspections. On or before April 30 in each year, commencing with the year 1971, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of all units of the Equipment then covered hereby, (b) showing the amount, description and numbers of any units of the Equipment that have suffered a Casualty Occurrence whether by accident or otherwise during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and (c) stating that, in the case of any units of the Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. Possession and Use. The Railroad, so long as it shall not be in default hereunder, shall be entitled to the possession of the Equipment and the use thereof upon the

lines of railroad owned or operated by it or by any Affiliate or over which it or any Affiliate has trackage rights and upon connecting and other railroads in the usual interchange of traffic and upon connecting and other railroads over which through service may from time to time be afforded but only upon and subject to all the terms and conditions of this Agreement, and upon the further condition that if such use is to be upon lines of railroad in any jurisdiction outside the United States of America, the Railroad shall prior to such use, to the satisfaction of the Vendor, arrange for the filing, recording or deposit (or any similar action) of such instruments required or advisable to protect the security interest of the Vendor in such Equipment in such jurisdiction and furnish to the Vendor an opinion of counsel practicing in such jurisdiction that this Agreement and any instrument of assignment pursuant to which rights hereunder may be assigned are valid instruments enforceable against the parties hereto and thereto in such jurisdiction in accordance with their terms and that any filing, recording or deposit (or any similar action) of such instruments required or advisable to protect the security interest of the Vendor in such Equipment in such jurisdiction has been effected, specifying

any such filing, recording or deposit (or similar action) so effected. The Railroad, without the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any Affiliate. The Railroad, with the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any other railroad company. The rights of any such railroad company under said agreements shall be expressly subordinated to the rights of the Vendor under this Agreement.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through, under or against the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any unit or units of the Equipment equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

ARTICLE 13. Railroad's Indemnities. The Railroad shall indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad shall bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all units of the Equipment.

ARTICLE 14. Patent Indemnities. The Railroad shall indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

ARTICLE 15. Assignments. All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and

reassigned by any assignee at any time or from time to time to any person or persons. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to have the Equipment constructed and to deliver the same in accordance with Articles 1 and 2 hereof or relieve the Railroad of any of its obligations to the Manufacturer hereunder, including without limitation its obligations to the Manufacturer under Articles 2, 4, 7, 13 and 14 hereof, the last paragraph of this Article 15 and subparagraphs (a) and (b) of the third paragraph of Article 3 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification

of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, except for certain specified rights of the Manufacturer hereunder, is to become effective concurrently herewith. The Railroad expressly represents, for the purpose of assurance to any person or persons considering the acquisition of this Agreement or of all or any of the rights of the Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer as hereinbefore provided the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the

manufacture, construction or delivery thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against the Manufacturer only.

In the event that this Agreement is assigned by the Manufacturer, or reassigned by any assignee, the Railroad's obligation to make payments of the instalments of its indebtedness payable pursuant to subparagraph (c) of the third paragraph of Article 3 hereof and interest thereon shall be a direct obligation to any such assignee and shall be enforceable as such by each such assignee and the remedies and powers provided for in Article 17 hereof shall be exercised only by the actual assignee.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change the markings to be maintained on both sides of each unit of the Equipment so as to indicate the title of such assignee to the Equipment,

such markings to bear such words or legend as shall reasonably be specified by such assignee. The cost of such markings with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Railroad. The cost of such markings in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad, in connection with each settlement for a Group of the Equipment subsequent to such transfer or assignment, will deliver to the assignee, at the time it gives notice fixing the Closing Date with respect to such Group as provided in Article 3 hereof, all documents required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If this Agreement shall have been assigned by the Manufacturer and the assignee shall not make payment to the Manufacturer on the Closing Date with respect to a Group of the

Equipment of an amount equal to that portion of the aggregate Purchase Price of such Group to be paid pursuant to subparagraph (c) of the third paragraph of Article 3 hereof, the Manufacturer will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by the assignee, the Railroad will not later than 90 days after such Closing Date pay or cause to be paid to the Manufacturer such amount, together with interest thereon from such Closing Date to the date of such payment to the Manufacturer at the average prime rate of interest of the five leading New York City banks in effect on such Closing Date.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Railroad shall fail to pay in full any sum payable by it when payment thereof shall be due hereunder; or

(b) The Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad, and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the indebtedness payable hereunder), and all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Railroad shall sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment and use thereof without first obtaining the written consent of the Vendor, or shall make or suffer any other unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment or use thereof; provided, however, an assignment or transfer

to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all the property of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not constitute such an event of default;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor (all of which to the extent legally permissible being hereby waived by the Railroad), declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10% per annum to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the immediately preceding sentence, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable and during the continuance of such event of default, the Vendor may upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force and applicable to the action to be taken by the Vendor:

- (a) Take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or any

unit thereof, without liability to return to the Railroad any sums theretofore paid by the Railroad to the Vendor and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or of any Affiliate and for such purpose may enter upon the premises of the Railroad or the premises of any Affiliate or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad or of any Affiliate with or without process of law. In case the Vendor shall rightfully demand possession of the Equipment in pursuance of its remedies under this Agreement and shall reasonably designate a point or points upon the premises of the Railroad or of any Affiliate for the delivery of the Equipment to the Vendor, the Railroad shall at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points so designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad or of any Affiliate until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner;

(b) (After the Vendor takes possession of the Equipment as hereinbefore in this Article 17 provided) retain, at its election and subject to any mandatory requirements of law then in force and applicable thereto, the Equipment as its own and make such disposition thereof as the Vendor shall deem fit, and in such event all the Railroad's rights in the Equipment will thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, within 20 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. Written notice of the Vendor's election to retain the Equipment for its own use may be given to the Railroad by mail addressed to the Railroad as provided in Article 22 hereof at any time during a period of 30 days after the entire indebtedness in respect of the aggregate Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17; and

(c) With or without the taking of possession thereof, at its election, sell the Equipment or any unit thereof, free from any and all claims of the Railroad or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine, all subject to and in compliance with any mandatory requirement of law then in force and applicable to such sale. To the extent permitted by any such mandatory requirements of law then in force and applicable thereto, any

sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than ten days prior thereto, by mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17). In payment of the purchase price therefor, the Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Vendor from the Railroad hereunder. The proceeds of any sale hereunder, less the attorney's fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously

and as often and in such order as may be deemed expedient by the Vendor.

All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorney's fees, incurred by the Vendor in enforcing its

remedies under the terms of this Agreement. In the event that the Vendor shall bring suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may, to the extent permitted by law, recover reasonable expenses, including attorney's fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 19. Extension not a Waiver. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. Recording. The Railroad will cause this Agreement, the first assignment hereof (a counterpart of such

assignment being attached hereto) and any amendments or supplements hereto and thereto to be filed and recorded with the Interstate Commerce Commission and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing and recording and an opinion of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses, except the counsel fees of the Manufacturer, but including the fees and expenses of counsel for the first assignee of this Agreement and of special counsel for all other parties acquiring interests in the first assignment by the Vendor of this Agreement, and including taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, recording and deposit of this Agreement, of such first assignment, of any instrument supplemental to or amendatory of this Agreement or such first

assignment and of any instrument required of the Vendor under Article 5 hereof upon the payment in full of the indebtedness in respect of the Purchase Price of the Equipment due hereunder. In addition, the Railroad will pay all reasonable costs and expenses, including fees and expenses of counsel and including taxes, if any, of the first assignee of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent) and of any party or parties acquiring interests in such first assignment, incurred in connection with such first assignment and payments made thereunder by such first assignee, and in connection with the transfer by any party or parties of interests acquired in such first assignment. For the purposes of this Article 21, if the first assignee is an agent any successor agent to such agent shall be considered the first assignee.

ARTICLE 22. Notice. Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to such party at the following specified addresses:

(a) to the Railroad, at 8 North Jefferson Street,
Roanoke, Virginia 24011;

(b) to the Manufacturer, at the addresses specified
in Item 4 of Schedule A hereto;

(c) to any assignee of the Vendor at such address as may have been furnished in writing to the Railroad by such assignee;

or at such other address as may have been furnished in writing by such party to the other appropriate party or parties designated above.

ARTICLE 23. Article Headings. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. Effect and Modification of Agreement. This Agreement, including the schedules relating hereto, exclusively and completely states the rights and obligations of the Vendor and the Railroad with respect to the Equipment and supercedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional

rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad warrants that its chief place of business is in the Commonwealth of Virginia.

ARTICLE 26. Definitions. The term "Vendor," whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations and, after any such assignment, (a) any assignee for the time being of such particular assigned rights as regards such rights, (b) for the purposes of the indemnifications provided in Articles 4, 13 and 14 hereof, any persons for whom such assignee is acting as agent, and (c) any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment. The term "Manufacturer," whenever used in this Agreement, means, both before and after any such assignment, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations.

ARTICLE 27. Execution. This Agreement, which is dated for convenience as of January 15, 1970, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, J. T. Valleroy and F. D. Brumbaugh have hereunto set their hands and seals, and the Railroad has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

J. T. Valleroy (L.S.)
J. T. Valleroy

F. D. Brumbaugh (L.S.)
F. D. Brumbaugh

NORFOLK AND WESTERN RAILWAY COMPANY

By C. D. Deibel
Assistant Vice President-Finance

ATTEST:

W. H. Ogden
Secretary

COMMONWEALTH OF VIRGINIA)
) ss.:
 CITY OF ROANOKE)

On this *4th* day of *April*, 1970, before me personally appeared J. T. Valleroy and F. D. Brumbaugh, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

Judy A. McLaney

 Notary Public

My Commission Expires April 21, 1973

COMMONWEALTH OF VIRGINIA)
) ss.:
 CITY OF ROANOKE)

On this *7th* day of *April*, 1970, before me personally appeared C. B. Deibel, to me personally known, who being by me duly sworn, says that he is Assistant Vice President - Finance of Norfolk and Western Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Judy A. McLaney

 Notary Public

SCHEDULE A - J. T. VALLEROY AND F. D. BRUMBAUGH

- Item 1: J. T. Valleroy and F. D. Brumbaugh, individuals (herein collectively called the Vendor or Manufacturer), who are parties with the Railroad to an Agreement for Construction of Railroad Equipment dated as of December 22, 1964, as amended, whereby the Railroad, as an independent contractor, has agreed to construct and complete, for the Manufacturer and as its property, certain railroad equipment, including the railroad equipment described in Schedule B hereto (herein called the Equipment).
- Item 2: For the purpose of making settlement, the Equipment may constitute a single Group or be divided in Groups of units of the Equipment delivered to and accepted by the Railroad hereunder, each Group to consist of such number of units as shall be determined by mutual agreement of the Railroad and the Manufacturer.
- Item 3: Deferred Purchase Price: \$1,450,000.
- Item 4: J. T. Valleroy, 3108 Merino Drive, Roanoke, Virginia 24018, and F. D. Brumbaugh, 3126 Yellow Mountain Road, Roanoke, Virginia 24014.

SCHEDULE B - J. T. VALLEROY AND F. D. BRUMBAUGH

<u>Type</u>	<u>Specifications</u>	<u>AAR Symbol</u>
70-ton 52'6" gondola cars with 48" sides and roller bearings	Railroad's General Arrangement Drawings Nos. J-50848 and J-50849	GB

<u>Plant</u>	<u>Quantity</u>	<u>Railroad's Road Numbers (both inclusive)</u>
Railroad's Shop at Brewster, Ohio	125	310875-310999

<u>Estimated Unit Price</u>	<u>Estimated Total Price</u>	<u>Delivery</u>
\$11,625	\$1,453,125	At Brewster, Ohio, or at such other place or places as may be mutually agreed upon by the parties hereto, from January through April 1970

AGREEMENT AND ASSIGNMENT dated as of January 15, 1970 (hereinafter called this Assignment), between J. T. VALLEROY and F. D. BRUMBAUGH (hereinafter collectively called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an Agency Agreement dated as of January 15, 1970 (hereinafter called the Agency Agreement), a copy of which has been delivered to the Manufacturer.

WHEREAS, the Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of January 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 of the Conditional Sale Agreement, respectively, called the Equipment);

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of \$1 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

SECTION 1. The Manufacturer hereby assigns, transfers and sets over unto the Agent, its successors and assigns:

(a) all the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent to the Manufacturer of the amounts required to be paid under Section 5 hereof with respect thereto;

(b) all the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to have the Equipment constructed and to deliver the same, the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, the last paragraph of Article 7 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

(without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to have the Equipment constructed and to deliver the same in accordance with Article 1 and 2 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 3, 4, 7, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer

hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and other property to which the Agent is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but not at the expense of the Manufacturer.

If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to such unit, including any right, title and interest under the Conditional Sale Agreement with respect to such unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be re-assigned, transferred and set over back to the Manufacturer by the Agent.

SECTION 2. The Manufacturer covenants and agrees that it will arrange to have the Equipment constructed and to

deliver the same to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Agent and the Railroad that at the time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the delivery thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Agent promptly notifying the Manufacturer of any such defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY
AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Subject to the conditions contained in the fifth paragraph of this Section 5, if the Agent shall at any time receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final Statement (as this term is defined in subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as this term is defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as this term is defined in said subparagraph (b)) of such units of the Equipment but is less than the Deferred Purchase Price (as this term is defined in subparagraph (a) of said third paragraph) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of such excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before January 15, 1971, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as this term is defined in said Article 3) of such Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before such Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent transferring to the Agent, for the benefit of the Investors, title to the units of the Equipment in such Group and warranting to the Agent and to the Railroad that, at the time of delivery of such units to the Railroad under the Conditional Sale Agreement, the Manufacturer had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad and inspected and accepted on behalf of the Railroad and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A
SECURITY AGREEMENT FILED UNDER INTERSTATE
COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in such Group with a certification by the Railroad endorsed thereon as to the correctness of the price of such units stated therein;

(d) Opinion of Messrs. Kelley Drye Warren Clark Carr & Ellis, who are acting as special counsel for the Agent and for the Investors, dated as of such Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is, subject to applicable bankruptcy and insolvency laws, enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are, subject to applicable bankruptcy and insolvency laws, enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in such Group is validly vested in the Agent and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the

Railroad under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the protection of the rights of the Agent in the United States of America, and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto or hereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iii), (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its incorporation) and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Railroad, and has been duly executed and delivered by the Manufacturer, and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental

instrumentality or of any agreement or instrument to which the Railroad is now a party, and (iv) this Assignment has been duly executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery by the Agent, is a legal, valid and binding instrument enforceable in accordance with its terms.

Any opinion delivered hereunder after the first Closing Date may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore delivered hereunder without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d) and (e) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (a) as to the due authorization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency Agreement contained in Section 5 of Article 4 thereof and (b) as to any matter governed by the law

of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Railroad, or an opinion of counsel practicing in such jurisdiction, as to such matter; provided, however, that said counsel shall state in such opinion that they believe that they, the Agent and the Investors are justified in so relying.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make such payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event

of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Agent, its successors and assigns, that the Conditional Sale Agreement was duly executed and delivered by the Manufacturer for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Agent or its successors or assigns, make, execute and deliver all such further instruments of assignment,

transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Agent or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of January 15, 1970, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. The actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. The Agent will deliver one of such counterparts to the Railroad.

IN WITNESS WHEREOF, J. T. Valleroy and F. D. Brumbaugh have hereunto set their hands and seals, and the Agent has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

J T Valleroy (L.S.)
J. T. Valleroy

F. D. Brumbaugh (L.S.)
F. D. Brumbaugh

THE FIRST PENNSYLVANIA BANKING AND
TRUST COMPANY, as Agent

By Wm. C. ...
Vice President

ATTEST:

[Signature]
Assistant Secretary

COMMONWEALTH OF VIRGINIA)
) ss.:
 CITY OF ROANOKE)

On this *7th* day of *April*, 1970, before me personally appeared J. T. Valleroy and F. D. Brumbaugh, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

Judith A. McLauney
 Notary Public

My Commission Expires April 21, 1973

COMMONWEALTH OF PENNSYLVANIA)
) ss.:
 COUNTY OF PHILADELPHIA)

On this *13th* day of *April*, 1970, before me personally appeared *W. M. KRAYE*, to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said corporation.

Judith Z. Pote
 Notary Public

JUDITH Z. POTE

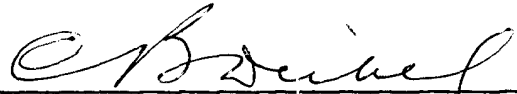
Notary Public, Philadelphia, Pennsylvania
 My Commission Expires January 28, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of January 15, 1970.

NORFOLK AND WESTERN RAILWAY COMPANY

By

A handwritten signature in cursive script, appearing to read "C. Brine", written over a horizontal line.

Assistant Vice President-Finance